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OFFICE OF PETITIONS

In re Application of	:	
Chengcai Chu, et al.	:	
Application No. 09/581,036	:	ON PETITION
Filed: August 8, 2000	:	
Attorney Docket No. PPD50288UST	:	

CORRECTED DECISION

This is a corrected decision on the petition under 37 CFR 1.137(b), filed June 25, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1) noted above.

The Office erred on October 23, 2003 in granting the petition.

MPEP 711.03(c) in pertinent part states:

“An application subject to a final action in which a proposed amendment under 37 CFR 1.116 is filed as the required reply will normally be routed by the Office of Petitions to the Technology Center (TC) to determine whether a proposed amendment places the application in condition for allowance prior to granting any petition to revive such application...If, on the other hand, the reply would not place the application in condition for allowance, the examiner is instructed to complete form PTOL-303 and return the form to the Office of Petitions with the application. Form PTOL-303 should not be mailed to the applicant by the examiner. **In this situation, the Office of Petitions will not grant the petition.**” (Emphasis supplied)

Unfortunately, the examiner, prior to the last decision, did not review the amendment, as required by MPEP 711.03(c). Since the decision mailed October 23, 2003 improperly stated the petition was granted, it is hereby vacated. The Office sincerely apologizes for this error and any inconvenience caused to petitioner is extremely regretted.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, a request for continued examination (RCE) under 37 CFR 1.114, or the filing of a continuation application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), an RCE under 37 CFR 1.114, or the filing of a continuation application. A copy of the examiner's Advisory Action (Form PTOL-303) is attached herewith. It is suggested that petitioner consider filing an RCE using the amendment already filed as the submission required under 37 CFR 1.114.

It is uncertain if the person signing the petition has filed an appropriate power of attorney in this case (as mentioned in the previous decision). Accordingly, a courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence will be directed solely to the address of record until otherwise instructed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

**Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450**

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The centralized facsimile number is **(703) 872-9306**.

Telephone inquiries concerning this decision should be directed to the Marianne Jenkins at (703) 306-3475.



Randall Green
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Advisory Action (Form PTOL-303)

cc: Syngenta Biotechnology, Inc.
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